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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,133	02/24/2004	Christopher M. Gallant	05918-324001 / VGCP No.	1633
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FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER RODRIGUEZ, RUTH C	
			ART UNIT	PAPER NUMBER

3677

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/785,133

Applicant(s)

GALLANT ET AL.

Examiner

Ruth C. Rodriguez

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 32-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 22-31 is/are rejected.
- 7) ☒ Claim(s) 16-21 and 38-40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/24/04 & 8/12/05
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-31 and 38-40, drawn to a self-engageable fastener component, classified in class 24, subclass 452.
  - II. Claims 32-37, drawn to a method of making a self-engageable fastener component, classified in class 264, subclass 166.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, a materially different process can be used to make the fastener where the engageable elements are cut from the sheet-form base.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with James Babineau on 13 September 2005 a provisional election was made without traverse to prosecute the invention of Invention I, claims -31 and 38-40. Affirmation of this election must be made by applicant in replying

to this Office action. Claims 32-37 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Information Disclosure Statement***

3. The information disclosure statement filed 24 February 2004 and 12 August 2005 have been considered for this Office Action.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1, 2, 6, 8, 13, 15 and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Allan (US 5,179,767).

A self-engageable fastener component comprises a sheet-form base (606) and an array of wedge-shaped, engageable elements (600) extending integrally from at least one side of the sheet-form base. Each of the engageable elements has an engageable side (604) and a non-engageable side (stem) conterminous at an upper edge of the element. The upper edge of each engageable element defines a curve in top view and the engageable sides of a majority of the elements are oriented in a common direction (Fig. 30).

The engageable elements are arranged in at least one row along the sheet-form base (Fig. 30). The row extends toward the single edge (Fig. 30).

The curve defined by the upper edge in top view is substantially circular with a constant radius of curvature (Fig. 30).

The curve defined by the upper edge in top view is of a group consisting of parabolic curves, elliptical curves, hyperbolic curves and mixtures thereof (Fig. 30).

The engageable sides of the wedge-shaped elements overhang the sheet-form base (Fig. 30).

The engageable side of each fastener element extends downwardly from the upper edge towards the sheet-form base at an undercut angle, measured in a midplane bisecting the fastener element and perpendicular to the sheet-form base, of between about 10 and 45 degrees (Fig. 30).

The engageable elements extend outwardly from two opposite sides of the sheet-form base (Fig. 30).

The sheet-form base forms an elongated U-shaped structure (Fig. 27).

The wedge-shaped elements extend from an inside surface of the U-shaped structure (Fig. 27). A majority of the engageable sides of the wedge-shaped elements can be directed away from an open edge of the U-shaped structure (Fig. 27).

The wedge-shaped elements extend from an outside surface of the U-shaped structure (Fig. 27).

The sheet-form base forms an elongated strap (Figs. 28 and 29).

The fastener component comprises only a single row of the wedge-shaped elements all arranged with their engageable sides directed toward and end of the strap (Figs. 30).

6. Claim 1-6, 8, 13 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaneko (US 5,212,853).

A self-engageable fastener component (1) comprises a sheet-form base (10a,10b) and an array of wedge-shaped, engageable elements (3,4) extending integrally from at least one side of the sheet-form base. Each of the engageable elements has an engageable side (3b) and a non-engageable side (4) conterminous at an upper edge of the element. The upper edge of each engageable element defines a curve in top view and the engageable sides of a majority of the elements are oriented in a common direction (Figs. 21-24).

The engageable elements are arranged in at least one row along the sheet-form base (Fig. 24). The row extends toward the single edge (Fig. 24).

The elements are arranged in an array of multiple rows and columns (Figs. 11, 12, 15, 16, 26 and 30).

The elements are arranged in multiple rows, with elements of adjacent rows offset from one another along their respective rows (Figs. 11, 12, 15, 16, 26 and 30).

The elements of adjacent rows are offset by about one-half a nominal spacing between adjacent elements within a row (Figs. 11, 12, 15, 16, 26 and 30).

The curve defined by the upper edge in top view is substantially circular with a constant radius of curvature (Fig. 24).

The curve defined by the upper edge in top view is of a group consisting of parabolic curves, elliptical curves, hyperbolic curves and mixtures thereof (Fig. 24).

The engageable sides of the wedge-shaped elements overhang the sheet-form base (Figs. 23 and 24).

In combination, two fastener components (10a,10b) arranged with the engageable sides of the their wedge-shaped elements overlapping one another to resist motion between the fastener components (Fig. 24).

7. Claim 1, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Merser (US 3,462,802).

A self-engageable fastener component (1) comprises a sheet-form base (1) and an array of wedge-shaped, engageable elements (4) extending integrally from at least one side of the sheet-form base. Each of the engageable elements has an engageable side (top portion) and a non-engageable side (lower portion) conterminous at an upper edge of the element. The upper edge of each engageable element defines a curve in top view and the engageable sides of a majority of the elements are oriented in a common direction (Figs. 1-5).

The sheet-form base forms an elongated strap (Fig. 2).

The fastener component defines an aperture (inside of 2) adjacent one end of the strap. The aperture is sized to receive an opposite end of the strap therethrough (Figs. 1-5).

The fastener component further comprises an exposed retention edge (6) along one side of the aperture. The retention edge positioned to engage the engageable sides of the wedge-shaped elements with the opposite end of the strap pulled through the aperture to resist removal of the strap from the aperture (Fig. 5).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7, 9-12, 14, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allan.

Allan discloses a self-engageable fastener component having all the features mentioned above for the rejection of claim 1. Allan fails to disclose any specific dimensions of the fastener component and therefore fails to disclose that the engageable side of each fastener element extends downwardly from the upper edge towards the sheet-form base at an undercut angle, measured in a midplane bisecting the fastener



element and perpendicular to the sheet-form base, of between about 10 and 45 degree, the constant radius of curvature is from about 0.25 to 2.5 centimeters, a maximum elevation of the upper edge above the top surface of the sheet-form base is between about 0.025 and 6.3 millimeters, each engageable element has a width, measured along the sheet-form base perpendicular to the single edge, of between about 0.13 and 6.3 millimeters and each engageable element has a length, measured along the sheet-form base parallel to the single edge, of between about 0.13 and 2.54 centimeters. However, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have the engageable side of each fastener element extends downwardly from the upper edge towards the sheet-form base at an undercut angle, measured in a midplane bisecting the fastener element and perpendicular to the sheet-form base, of between about 10 and 45 degree, the constant radius of curvature is from about 0.25 to 2.5 centimeters, a maximum elevation of the upper edge above the top surface of the sheet-form base is between about 0.025 and 6.3 millimeters, each engageable element has a width, measured along the sheet-form base perpendicular to the single edge, of between about 0.13 and 6.3 millimeters and each engageable element has a length, measured along the sheet-form base parallel to the single edge, of between about 0.13 and 2.54 centimeters since such a modification would have involved a mere changes in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPA 237 (CCPA 1955). Especially since the Applicant fails to provide any criticality for the size of the fastener component.

Allan fails to disclose that the sheet-form base is secured to and overlays a layer of resilient material. However, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have the sheet-form base is secured to and overlays a layer of resilient material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. In re Leshin, 125 USPQ 416. Especially since the use of layer fastener components using a layer of resilient material is well known in the fastener art.

Allan discloses that the sheet-form base is flexible (Figs. 28 and 29).

### ***Allowable Subject Matter***

Claims 16-21 and 38-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mintel et al. (US 4,794,674), Clark (US 4,941,238), Allan (US 5,179,767 and US 5,640,744), Kaneko (US 5,212,853), Duffy (US 5,983,467), Martin et al. (US 6,625,851

B1) and Akeno et al. (US 6,487,759 B1) are cited to show state of the art with respect to fasteners having some of the features being claimed by the current application.

Merser (US 3,462,802) and Meeks (US 4,537,432) are cited to show state of the art with respect to straps having some of the features being claimed by the current application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase the patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as PTO's mailroom processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

(Typed or printed name of person signing this certificate)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response has been transmitted by facsimile will cause further unnecessary delays in the processing of your application, duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

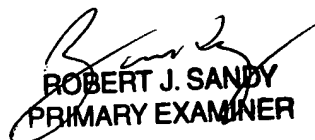
you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

RCR  
rcr

September 19, 2005

  
ROBERT J. SANDY  
PRIMARY EXAMINER